

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2006 JUN -2 AM 10:13

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

Sunset Development, LLC )  
27160 470<sup>th</sup> Ave. )  
Tea, SD 57064-8112 )

Daniels Construction, Inc. )  
27160 470<sup>th</sup> Ave. )  
Tea, SD 57064-8112 )

James P. Daniels )  
27160 470<sup>th</sup> Ave. )  
Tea, SD 57064-8112 )

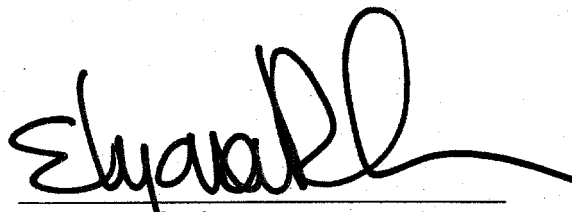
Respondents. )  
\_\_\_\_\_ )

FINAL ORDER

Docket No. CWA-08-2005-0052

Pursuant to 40 C.F.R. § 22.18 of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

06.02.06  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2006 JUN -2 AM 10:14

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of:

Sunset Development, LLC,  
Daniels Construction, Inc., and  
James P. Daniels,

Respondents

**CONSENT AGREEMENT**

Docket No. CWA-08-2005-0052

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and  
Sunset Development, LLC, Daniels Construction, Inc., and James P. Daniels (collectively,  
Respondents), by their undersigned representatives, hereby consent and agree as follows:

1. On September 15, 2005, Complainant issued an Administrative Penalty  
Complaint (Complaint) alleging that the Respondents had violated section 301(a) of the Clean  
Water Act (the Act), 33 U.S.C. § 1311(a). The Complaint proposed that the Respondents pay an  
administrative civil penalty for their violations, pursuant to section 309(g) of the Act, 33 U.S.C. §  
1319(g).

2. Respondents admit the jurisdictional allegations of the Complaint and neither  
admit nor deny the specific factual allegations of the Complaint. Respondents do not admit to  
any violations of the Act or to any wrongdoing.

3. Respondents waive their right to a hearing before any tribunal to contest any issue  
of law or fact set forth in the Complaint or in this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final order, applies to and is

binding upon EPA and upon Respondents and Respondents' heirs, successors and assigns. Any change in ownership or corporate status of any Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter that Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondents consent and agree to pay a civil penalty in the amount of sixty thousand dollars (\$60,000) in the manner described below in this paragraph:

- a. Payment is due within thirty (30) calendar days from the date that the Regional Judicial Officer issues the final order adopting this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day; those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

If sent by regular U.S. mail:

Mellon Bank  
Lockbox 360859  
Pittsburgh, PA 15251-6859

If sent by any overnight commercial carrier:

U.S. EPA, 360859  
Mellon Client Service Center Rm 154-0670  
500 Ross Street  
Pittsburgh, PA 15251-6859

If sent by wire transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004  
TREAS NYC/CTR/  
BNF=/AC-68011008

A copy of the check shall be sent simultaneously to:

Monica Heimdal  
Enforcement Officer  
Water Enforcement Program (8ENF-W)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

and

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the final order, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with the Act and its implementing regulations.

7. Any failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this Consent Agreement.

9. Each undersigned signatory for a Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind that Respondent to the terms and conditions of this Consent Agreement.

10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

11. Each party shall bear its own costs and attorney fees in connection with this matter.

12. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

Complainant.

Date: 06.01.06

By: *Diane R. Sipe*  
Diane Sipe, Director  
Water Enforcement Program  
Office of Enforcement,  
Compliance and Environmental Justice  
U.S. EPA Region 8  
999 18<sup>th</sup> St., Suite 300  
Denver, CO 80202

Date: 6/2/06

By: *Michael T. Risner*  
Michael T. Risner, Director  
David J. Janik, Supervisory Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement,  
Compliance and Environmental Justice  
U.S. EPA Region 8  
999 18<sup>th</sup> St., Suite 300  
Denver, CO 80202

SUNSET DEVELOPMENT, LLC,  
Respondent

Date: 5/25/06

By: *James P. Daniels*  
James P. Daniels, Manager  
Sunset Development, LLC  
27160 270<sup>th</sup> Avenue  
Tea, SD 57064-8112

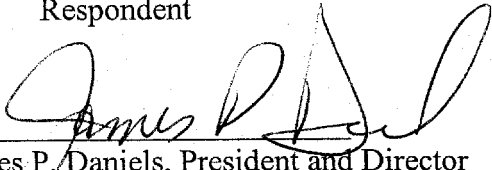
DANIELS CONSTRUCTION, INC.

Respondent

Date:

5/25/06

By:

  
James P. Daniels, President and Director  
Daniels Construction, Inc.  
27160 270<sup>th</sup> Avenue  
Tea, SD 57064-8112

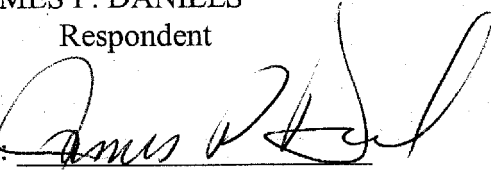
JAMES P. DANIELS

Respondent

Date:

5/25/06

By:

  
James P. Daniels  
27160 270<sup>th</sup> Avenue  
Tea, SD 57064-8112

Certificate of Service

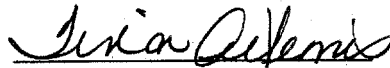
This is to certify that a copy of the preceding Final Order was sent to each of the following as indicated below:

Howard Kenison  
Lindquist & Vennum, P.L.L.P.  
Attorneys at Law  
600 Seventeenth Street, Suite 1800-S  
Denver, Colorado 80202-5441  
(by certified mail, return receipt requested)

Hon. William P. Moran  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave. N.W.  
Washington, D.C. 20460  
(by EPA pouch mail)

Margaret J. (Peggy) Livingston  
Enforcement Attorney  
Legal Enforcement Program  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202  
(by hand delivery)

Date: June 2, 2006.

  
Tina Artemis  
Regional Hearing Clerk